

HICKMAN'S EGG RANCH 30(B)(6) - ROBERT PHALEN APRIL 21, 2017

<p>1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA</p> <p>2 IN AND FOR THE COUNTY OF MARICOPA</p> <p>3</p> <p>4 Don't Waste Arizona, Inc., a) 5 501(c)(3) not-for-profit) 6 company organized under the) 7 laws of the State of Arizona,) 8 Plaintiffs,) Case No.: 9 vs.) CV-16-3319-PHX-GMS 10 Hickman's Egg Ranch, Inc.,) 11 Defendant.)</p> <p>12</p> <p>13 DEPOSITION OF HICKMAN'S EGG RANCH, INC. 14 by: ROBERT PHALEN 15 Pursuant to: RCP 30(b)(6)</p> <p>16 Tempe, Arizona 17 April 21, 2017 18 1:00 p.m.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 PREPARED BY: SEYMOUR REPORTING SERVICES 24 Registered Reporting Firm R1000 25 137 East Elliot Road, #2473 Gilbert, Arizona 85299 (P) 602.258.5800 (F) 888.881.5440</p>	<p>1 DEPOSITION OF ROBERT PHALEN,</p> <p>2 taken at 1:00 p.m. on April 21, 2017, at the law</p> <p>3 offices of The Shanker Law Firm, PLC, 700 East Baseline</p> <p>4 Road, Bldg. B, Tempe, Arizona, before PAMELA JOY</p> <p>5 GIFFIN, a Certified Reporter, #50106, in and for the</p> <p>6 State of Arizona.</p> <p>7</p> <p>8</p> <p>9</p> <p>10 APPEARANCES:</p> <p>11 For the Plaintiff:</p> <p>12 The Shanker law Firm, PLC</p> <p>13 BY: HOWARD M. SHANKER, ESQ.</p> <p>14 700 East Baseline Road, Bldg. B</p> <p>15 Tempe, Arizona 85283</p> <p>16 For the Defendant:</p> <p>17 Burch & Cracchiolo</p> <p>18 BY: BRYAN MURPHY, ESQ.</p> <p>19 702 East Osborn Road, Suite 200</p> <p>20 Phoenix, Arizona 85014</p> <p>21 Fennemore Craig, P.C.</p> <p>22 BY: MICHELLE DE BLASI, ESQ.</p> <p>23 2394 East Camelback Road, Suite 600</p> <p>24 Phoenix, Arizona 85016</p> <p>25 ALSO PRESENT: Stephen Brittle and Jim Manos</p>
<p>1 I N D E X</p> <p>2 WITNESS PAGE</p> <p>3 ROBERT PHALEN</p> <p>4 BY MR. SHANKER 4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 EXHIBIT DESCRIPTION PAGE</p> <p>9</p> <p>10 1 Copy of Letter dated August 26, 2016 to 24 Maricopa County LEPC</p> <p>11 2 Copy of 60-Day Notice Letter dated May 2, 28 2016 to Hickman's Egg Ranch, Inc. from Stephen M. Brittle</p> <p>12</p> <p>13 3 Copy of 60-Day Notice Letter dated 31 February 6, 2017 to Hickman's Egg Ranch Inc. from Stephen M. Brittle</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Tempe, Arizona</p> <p>2 April 21, 2017</p> <p>3 1:00 p.m.</p> <p>4</p> <p>5 ROBERT PHALEN,</p> <p>6 called as a witness herein, having been first duly</p> <p>7 sworn, was examined and testified as follows:</p> <p>8</p> <p>9 EXAMINATION</p> <p>10 BY MR. SHANKER:</p> <p>11 Q. Hi. Can you please state your name and work</p> <p>12 address for the record.</p> <p>13 A. Robert Phalen, P-h-a-l-e-n. Work address,</p> <p>14 corporate office, 6515 South Jackrabbit Trail, Buckeye,</p> <p>15 Arizona. Offhand I can't remember the ZIP Code.</p> <p>16 MR. SHANKER: Go off the record for a second.</p> <p>17 (An off-the-record discussion ensued.)</p> <p>18 THE WITNESS: Based upon my business card,</p> <p>19 85326 is the ZIP Code.</p> <p>20 Q. BY MR. SHANKER: Okay. Have you ever had</p> <p>21 your deposition taken before?</p> <p>22 A. A long time ago. About ten years ago.</p> <p>23 Q. And in what context was it?</p> <p>24 A. It was for ADEQ for work we were doing with</p> <p>25 the Attorney General's Office.</p>

<p>5</p> <p>1 Q. Do you remember the nature of the case?</p> <p>2 A. It was a used oil case that didn't go</p> <p>3 anywhere, so they settled after the fact, so it wasn't</p> <p>4 used.</p> <p>5 Q. All right. Well, a few things to keep in</p> <p>6 mind. First, you have to verbally answer like yes or</p> <p>7 no. You can't shake your head. Otherwise, she's not</p> <p>8 going to be able to make the record.</p> <p>9 A. I understand.</p> <p>10 Q. And if I'm not sure clear or you don't</p> <p>11 understand something, just let me know.</p> <p>12 A. Okay.</p> <p>13 Q. Are you on any medication or drugs or --</p> <p>14 A. No.</p> <p>15 Q. -- would there be any anything that would</p> <p>16 impede your ability --</p> <p>17 A. No, sir.</p> <p>18 Q. The other thing you may want to do is wait</p> <p>19 for me to ask the question before you answer it so that</p> <p>20 we don't overlap, and if your lawyers want to object,</p> <p>21 that gives them a chance to do that.</p> <p>22 What is your position with Hickman?</p> <p>23 A. I'm the environmental manager for all of our</p> <p>24 Arizona facilities and I also lend a hand with the</p> <p>25 Colorado and California facilities.</p>	<p>7</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And what did you do to prepare for the</p> <p>3 deposition?</p> <p>4 A. I read the Superior Court filing. I</p> <p>5 researched our ammonia sampling, our hydrogen sulfide</p> <p>6 sampling. I reviewed our internal policies, and I had</p> <p>7 multiple meetings with attorneys and various people at</p> <p>8 Hickman Family Farms.</p> <p>9 Q. Who are the various people other than your</p> <p>10 attorneys that you met with?</p> <p>11 A. Billy Hickman, Clint Hickman, Jim Manos.</p> <p>12 Q. And were your attorneys present when you met</p> <p>13 with Hickman and Jim Manos?</p> <p>14 A. There were some conference calls that our</p> <p>15 attorneys were present on, but internal meetings</p> <p>16 happened without our attorneys being present.</p> <p>17 Q. And what did you discuss in those internal</p> <p>18 meetings where your attorneys were not present?</p> <p>19 MR. MURPHY: Howard, at this point you have</p> <p>20 served a Rule 36(b)(6) notice that includes specific</p> <p>21 subject areas. This is not among the included areas.</p> <p>22 So I'm going to ask that you focus on -- he hasn't been</p> <p>23 prepared for anything except the specific areas in your</p> <p>24 notice.</p> <p>25 MR. SHANKER: Okay. But this is background</p>
<p>6</p> <p>1 Q. Okay. So which facilities does that include?</p> <p>2 A. We have Arlington; Maricopa. Arlington North</p> <p>3 and South, plus Maricopa. Tonopah; Colorado Egg,</p> <p>4 Hudson; Colorado Egg, Grande Junction; Central Valley</p> <p>5 Egg, LLC, in Central California, and that's all I</p> <p>6 believe right now.</p> <p>7 Q. And you're responsible for all of those</p> <p>8 facilities?</p> <p>9 A. In one way or the other. I try to help the</p> <p>10 California facilities and Colorado facilities with</p> <p>11 various things that may come up, but I'm the primary</p> <p>12 responsibility for environmental, some health and</p> <p>13 safety for all of our Arizona facilities.</p> <p>14 Q. So what is your -- essentially your job</p> <p>15 description? Or did you just give that to me? I mean,</p> <p>16 are you familiar with EPCRA?</p> <p>17 A. Yes.</p> <p>18 Q. And are you responsible for the EPCRA</p> <p>19 reporting for the facilities?</p> <p>20 A. I am responsible as of today. I've been</p> <p>21 there one year, so as I expand I will be -- future</p> <p>22 responsibilities will ensue.</p> <p>23 Q. Okay. And do you understand that Hickman has</p> <p>24 brought you here essentially as the to-go person for</p> <p>25 these types of questions?</p>	<p>8</p> <p>1 information, so if you want to make the objection, you</p> <p>2 can.</p> <p>3 MR. MURPHY: I am allowing you to ask</p> <p>4 background questions, but now you're getting into</p> <p>5 communications related to -- that do not relate</p> <p>6 specifically to the four areas that you've noticed the</p> <p>7 deposition for.</p> <p>8 MR. SHANKER: Are you instructing him not to</p> <p>9 answer?</p> <p>10 MR. MURPHY: Yes, I am, because I haven't</p> <p>11 prepared him for anything except the four areas of</p> <p>12 testimony that you've listed.</p> <p>13 MR. SHANKER: How would you prepare him to</p> <p>14 tell me what the content of his conversation was?</p> <p>15 Would you tell him not to answer?</p> <p>16 MR. MURPHY: I would tell him about privilege</p> <p>17 issues. I would say to him here is what you can</p> <p>18 discuss and here is what you can't. That is nothing</p> <p>19 that we went through.</p> <p>20 MR. SHANKER: Okay. So you've instructed him</p> <p>21 not to answer.</p> <p>22 You don't have to answer. We may have to</p> <p>23 call you back at some point or someone else.</p> <p>24 And when I say, "EPCRA," that's E-P-C-R-A.</p> <p>25 MR. MURPHY: And you can ask him about</p>

<p>9</p> <p>1 conversations that relate to the specific subject</p> <p>2 matters that you've listed in your notice -- I'm not</p> <p>3 foreclosing that -- but a general question tell me</p> <p>4 about any conversations you've had.</p> <p>5 MR. SHANKER: In preparation for this</p> <p>6 deposition?</p> <p>7 MR. MURPHY: If that was the predicate, I</p> <p>8 stand corrected. In preparation for this deposition.</p> <p>9 MR. SHANKER: That was the predicate.</p> <p>10 MR. MURPHY: Okay, good. Please continue.</p> <p>11 Q. BY MR. SHANKER: All right. So I guess you</p> <p>12 can answer. So when your lawyers were not present,</p> <p>13 what did you discuss with Billy Hickman, and was it --</p> <p>14 who else?</p> <p>15 A. Jim, Glenn Hickman.</p> <p>16 Q. Glenn Hickman also was there?</p> <p>17 A. Well, we discussed the previous time we</p> <p>18 arrived here and we didn't complete the deposition. We</p> <p>19 discussed the four questions based upon are you ready</p> <p>20 for these questions? Can you handle it? Yes.</p> <p>21 Q. And did they go over the specific information</p> <p>22 regarding these questions?</p> <p>23 A. No. They trust me to do that.</p> <p>24 Q. Even though you've only been there for one</p> <p>25 year?</p>	<p>11</p> <p>1 A. International environmental management.</p> <p>2 Q. Could you repeat that?</p> <p>3 A. International environmental management.</p> <p>4 Q. And did you have any other formal education</p> <p>5 or training?</p> <p>6 A. I've been OSHA trained since 1998 for 40-hour</p> <p>7 HAZWOPER, et cetera. I have been to smoke school.</p> <p>8 It's for air emissions and various requirements.</p> <p>9 Forklift certified '98 to 2010. Various other</p> <p>10 bloodborne pathogen training, you know, things that</p> <p>11 don't necessarily relate, but several classes through</p> <p>12 ADEQ I also took.</p> <p>13 Q. And where did you go to work after -- I'm</p> <p>14 assuming you went to work after ASU.</p> <p>15 A. I went to work immediately after Michigan</p> <p>16 State in 1998. In 1998 I worked in Tucson, Arizona for</p> <p>17 an aerospace manufacturing firm, Sargent Controls &</p> <p>18 Aerospace. Spent approximately two years there. Went</p> <p>19 to Wieser Lock, a company who's no longer there, in</p> <p>20 Tucson as well as their -- Sargent Controls,</p> <p>21 environmental manager. Wieser Lock, wastewater</p> <p>22 technician, environmental manager.</p> <p>23 Q. Did you -- at either of those two places, did</p> <p>24 you have to deal with air emissions issues?</p> <p>25 A. Not at either -- well, a little bit with</p>
<p>10</p> <p>1 A. Well, in addition to my year, I have several</p> <p>2 years of experience dealing with EPCRA, dealing with</p> <p>3 health and safety, dealing with, you know, various</p> <p>4 environmental issues.</p> <p>5 Q. Okay. Let's talk about that. So did you go</p> <p>6 to college?</p> <p>7 A. Yes.</p> <p>8 Q. Where did you go to college?</p> <p>9 A. Went to Michigan State University for my</p> <p>10 undergraduate. I went to Arizona State University for</p> <p>11 my master's program.</p> <p>12 Q. And what years did you get out from undergrad</p> <p>13 and your master's?</p> <p>14 A. 1998 for graduation at Michigan State</p> <p>15 University, bachelor of science. Did not graduate</p> <p>16 Arizona State due to tuition increases, but I was there</p> <p>17 for approximately four years with a 3.9 grade point</p> <p>18 average.</p> <p>19 Q. So you don't have a master's?</p> <p>20 A. No, sir.</p> <p>21 Q. What was your undergraduate degree in?</p> <p>22 A. Bachelor of science, resource development,</p> <p>23 specifically environmental policies.</p> <p>24 Q. And what were you studying at ASU for your</p> <p>25 master's?</p>	<p>12</p> <p>1 Sargent Controls based upon a carbon air scrubber that</p> <p>2 we had for VOCs, et cetera, but not at Wieser Lock,</p> <p>3 no. They were shutting their facility down at the</p> <p>4 time.</p> <p>5 Q. And what did you have to do with regard to</p> <p>6 the carbon air scrubbers?</p> <p>7 A. I assisted with permitting. I assisted with</p> <p>8 gathering data. I assisted with reporting to ADEQ,</p> <p>9 Pima County Department of Environmental Quality.</p> <p>10 Q. What type of stuff would you report?</p> <p>11 A. Hours of operation. Any time they wanted to</p> <p>12 do a performance test, I was their representative.</p> <p>13 Q. Okay. And where did you go after that?</p> <p>14 A. To Wieser Lock, and then I went to a company</p> <p>15 called Prototron Circuits Southwest in Tucson.</p> <p>16 Q. What year was that?</p> <p>17 A. Offhand, 2000. From 2000 to 2005 I worked at</p> <p>18 Prototron, a small circuit board company. I was their</p> <p>19 environmental health and safety manager.</p> <p>20 Q. And what did your duties entail there?</p> <p>21 A. Wastewater treatment, all OSHA compliance,</p> <p>22 all hazardous waste, all reported to Pima County, ADEQ,</p> <p>23 Form Rs, et cetera.</p> <p>24 After that, sir, I went to Arizona Department</p> <p>25 of Environmental Quality.</p>

<p>13</p> <p>1 Q. What year was that?</p> <p>2 A. 2005.</p> <p>3 Q. And what did you do there?</p> <p>4 A. Worked in solid waste as a biohazardous</p> <p>5 inspector, a solid waste inspector, landfills, transfer</p> <p>6 stations, medical waste facilities. I was also the</p> <p>7 used oil program coordinator. I managed all used oil</p> <p>8 transported in and out of the State of Arizona,</p> <p>9 generators, processors, transporters.</p> <p>10 Then I went to water quality where I was the</p> <p>11 biosolids coordinator. Also performed inspections for</p> <p>12 AZPDES as well as APP permit requirements.</p> <p>13 Q. Did you ever do anything with ammonia</p> <p>14 emissions?</p> <p>15 A. Not at ADEQ.</p> <p>16 Q. Were you ever involved in any kind of EPCRA</p> <p>17 reporting at ADEQ?</p> <p>18 A. No. Those were different departments.</p> <p>19 Q. Were you ever involved with Hickman Eggs?</p> <p>20 A. I inspected Hickman Eggs on two different</p> <p>21 occasions when I was in water quality division.</p> <p>22 Q. Do you remember what years and which</p> <p>23 facilities?</p> <p>24 A. 2010; 2009, Arlington North.</p> <p>25 Q. 2009 was Arlington North?</p>	<p>15</p> <p>1 inspected them, issued the reports. No issues were</p> <p>2 found.</p> <p>3 Q. Your responsibility was -- is it wastewater?</p> <p>4 A. Wastewater, AZPDES and APP permits and</p> <p>5 biosolids.</p> <p>6 Q. Okay. Why don't you spell out AZPDES and --</p> <p>7 A. Arizona Pollutant Discharge Elimination</p> <p>8 System, acronym A-Z-P-D-E-S, I believe. Yes.</p> <p>9 And Aquifer Protection Permits, acronym</p> <p>10 A-p-p.</p> <p>11 Q. Okay. And how long were you at ADEQ?</p> <p>12 A. Ten years.</p> <p>13 Q. And basically doing the same thing?</p> <p>14 A. I described three different jobs I had at</p> <p>15 ADEQ in those ten years, so there was a lot of change</p> <p>16 in those ten years.</p> <p>17 Q. For the last five years what did you do?</p> <p>18 A. I left ADEQ in 2010. I briefly worked as a</p> <p>19 consultant for approximately three to four months in</p> <p>20 EnviroSure, LLC.</p> <p>21 I left the consulting firm and was unemployed</p> <p>22 for about four months. My wife had some health issues;</p> <p>23 my newborn son had some health issues.</p> <p>24 I found the job at Hickman's. I applied, and</p> <p>25 I started in April of 2016.</p>
<p>14</p> <p>1 A. I believe so. And 2010 was in Tonopah,</p> <p>2 Tonopah facility.</p> <p>3 Q. Okay. And those were both for similar</p> <p>4 issues?</p> <p>5 A. Similar issues to what?</p> <p>6 Q. I don't know. What did you inspect them</p> <p>7 for? In 2009, what did you inspect the Arlington</p> <p>8 facility for?</p> <p>9 A. There were citizen complaints on Arlington</p> <p>10 for -- the complaint claim was the water was being</p> <p>11 dispersed in a fashion not associated with proper</p> <p>12 permits and also the CAFO designation came up.</p> <p>13 The complaint was closed after inspection.</p> <p>14 There was no evidence to find that Hickman Family Farms</p> <p>15 was doing anything alleged in the complaint.</p> <p>16 2010, Tonopah, similar complaint. Offhand I</p> <p>17 don't remember the specifics of it, but, again, both</p> <p>18 complaints were closed after inspection and a report</p> <p>19 was issued.</p> <p>20 Q. So if there was a public complaint about</p> <p>21 Hickman, would that end up on your desk or only on</p> <p>22 specific issues or just certain complaints? How did</p> <p>23 that get to you?</p> <p>24 A. It depended on what staff was available and</p> <p>25 scheduling conflicts. These two landed on my desk. I</p>	<p>16</p> <p>1 Q. And you've been at Hickman since April of</p> <p>2 2016?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Now, are you familiar with Arlington, the</p> <p>5 Arlington facility?</p> <p>6 A. Yes.</p> <p>7 Q. And I assume you've been there?</p> <p>8 A. Yes.</p> <p>9 Q. And there's an Arlington South and an</p> <p>10 Arlington North; is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. Do you consider those two separate facilities</p> <p>13 or are they one facility?</p> <p>14 A. I consider them two separate facilities.</p> <p>15 Q. Why is that?</p> <p>16 A. I consider them two separate facilities based</p> <p>17 upon the road that divides them as well as the</p> <p>18 facilities differ in their process as far as the</p> <p>19 production of eggs, the differences in housing for the</p> <p>20 hens, as well as the general landscape of the two</p> <p>21 facilities, and -- and I'll step back.</p> <p>22 I understand your question. They are both</p> <p>23 covered under one air quality permit for Maricopa</p> <p>24 County Health.</p> <p>25 Q. Okay. So are the lay houses in Arlington</p>

<p style="text-align: right;">17</p> <p>1 South different from the lay houses in Arlington North?</p> <p>2 A. Yes.</p> <p>3 Q. Could you tell me what the difference is?</p> <p>4 A. Size, population, as well as age of</p> <p>5 construction.</p> <p>6 Q. But is the construction essentially the same?</p> <p>7 A. It's similar.</p> <p>8 Q. Similar? What's the difference?</p> <p>9 A. Location of fans, location of --</p> <p>10 Q. So in Arlington North --</p> <p>11 MR. MURPHY: Howard, at this point I'm going</p> <p>12 to intrude with my point again. You're getting into</p> <p>13 issues that are not covered in your 30(b)(6) notice</p> <p>14 that he hasn't been prepared to testify to and I</p> <p>15 haven't talked to him about.</p> <p>16 MR. SHANKER: I mean, this has direct</p> <p>17 connection to ammonia emissions from each of the barns</p> <p>18 and the facilities.</p> <p>19 MR. MURPHY: It says, "The level/amounts of</p> <p>20 ammonia released into the air from Tonopah and</p> <p>21 Arlington facilities."</p> <p>22 MR. SHANKER: Right.</p> <p>23 MR. MURPHY: That's fair. What the design of</p> <p>24 the facilities has to do with that I don't know.</p> <p>25 MR. SHANKER: It has to do with the levels of</p>	<p style="text-align: right;">19</p> <p>1 A. I'm unsure. However, the construction date</p> <p>2 of the barns and the equipment put in since those time</p> <p>3 frames varies with location, and I'm sure you're aware</p> <p>4 of that based upon our EPCRA reports, which you had a</p> <p>5 copy of. The numbers are different for each facility,</p> <p>6 and mostly, in my opinion, it has to do with the</p> <p>7 population of the houses. They're different-sized</p> <p>8 houses.</p> <p>9 Q. So it's based on largely the number of</p> <p>10 chickens?</p> <p>11 A. That is my theory.</p> <p>12 Q. So you don't know if there's anyone at</p> <p>13 Hickman that would have the technical expertise to tell</p> <p>14 me if the nature of the building or the openings or the</p> <p>15 location of the fan has any impact on emissions?</p> <p>16 A. The --</p> <p>17 Q. You can answer.</p> <p>18 A. I just wanted to see if they -- I believe</p> <p>19 they all impact the nature of emissions, but the answer</p> <p>20 is I'm unsure. I have to say I don't know specifically</p> <p>21 how to answer your question.</p> <p>22 Q. Would Billy Hickman be the person to talk to</p> <p>23 about it?</p> <p>24 MR. MURPHY: If you don't know, I mean, just</p> <p>25 say you don't know, sir.</p>
<p style="text-align: right;">18</p> <p>1 emissions coming out of the various barns and how</p> <p>2 they're constructed.</p> <p>3 MR. MURPHY: I don't understand how the</p> <p>4 construction of barns has anything to do with amounts</p> <p>5 of ammonia.</p> <p>6 MR. SHANKER: Well, I can ask him.</p> <p>7 MR. MURPHY: Go ahead. You know, if you get</p> <p>8 a foundation for it.</p> <p>9 Q. BY MR. SHANKER: Would the construction of</p> <p>10 barns or the type of fans or where the fans are located</p> <p>11 and the placement of manure impact the amount of</p> <p>12 ammonia emissions?</p> <p>13 A. I don't really know, to tell you the truth.</p> <p>14 However --</p> <p>15 MR. MURPHY: If you don't know --</p> <p>16 THE WITNESS: I don't know.</p> <p>17 MR. MURPHY: -- that's the answer.</p> <p>18 THE WITNESS: That's where I have to go.</p> <p>19 Q. BY MR. SHANKER: So you don't know? Who</p> <p>20 would know that?</p> <p>21 A. Specifically your question who would know</p> <p>22 what, sir?</p> <p>23 Q. Who would know if the different locations of</p> <p>24 the fans and the different constructions would impact</p> <p>25 ammonia emissions at the various facilities?</p>	<p style="text-align: right;">20</p> <p>1 THE WITNESS: I don't know. I'm sorry.</p> <p>2 Q. BY MR. SHANKER: Well, I'm going to ask you a</p> <p>3 series of questions that have a direct impact on</p> <p>4 ammonia emissions, so your lawyer can object, or if you</p> <p>5 don't know the answers, we'll have to ask somebody else</p> <p>6 at some point.</p> <p>7 So in Arlington South, do barns 1 through 7</p> <p>8 have manure sheds on the ends of the building or</p> <p>9 enclosed manure pits below A-frame cages?</p> <p>10 A. Unfortunately, I didn't study the structures</p> <p>11 for preparation for this, so I have to say unsure at</p> <p>12 the specific structure of the houses.</p> <p>13 Q. And then for Arlington South, how is the</p> <p>14 manure collected from the pullet barns and where is it</p> <p>15 stored?</p> <p>16 MR. MURPHY: If you don't know the answer to</p> <p>17 the question --</p> <p>18 THE WITNESS: I know at Arlington South the</p> <p>19 manure is beneath where the hens are stored -- or where</p> <p>20 the hens are housed. At Arlington North they're on</p> <p>21 conveyor belts similar to Tonopah. However, that's</p> <p>22 about as far as I can answer your question directly</p> <p>23 without going off track.</p> <p>24 Q. BY MR. SHANKER: Okay. So how is the manure</p> <p>25 collected from the pullet barns at Arlington South?</p>

<p style="text-align: right;">21</p> <p>1 A. It's collected using a forklift truck, put 2 into trucks and hauled to the compost. 3 Q. And then does it fall just from the cages 4 directly to the floor or is there a conveyor belt? 5 MR. MURPHY: Howard, at this juncture if we 6 need to involve the court we will, but the essence of 7 it is this. Question one is, "The level/amounts of 8 ammonia released into the air from the Tonopah and 9 Arlington facilities." That is fair game. 10 How one thing impacts that or not, that 11 doesn't -- the fact is you ask questions about the 12 level of ammonia. He's prepared to give what he knows 13 about that, but asking him about the specific details 14 of barns and what impact that may have on the levels is 15 beyond the boundaries of the notice that you submitted, 16 and we haven't prepared him to testify to these issues. 17 MR. SHANKER: Well, maybe you should prepare 18 someone who could answer the questions because this has 19 a direct impact on the levels of ammonia that are 20 emitted. 21 MR. MURPHY: You didn't say someone to 22 testify about the various factors of the barn design to 23 affect the levels and amounts of ammonia. You said the 24 levels and amounts of ammonia. We're prepared to have 25 him testify to that, but we can't have him testify to</p>	<p style="text-align: right;">23</p> <p>1 Those aren't what you noticed, Howard. 2 You're free to put whatever you want in your 3 notice and that puts us under he's not been prepared to 4 talk about barn design dynamics and what impact they 5 may have on those. He's prepared to talk about our 6 estimates of the levels, and we'll make a record at 7 this point. 8 I know you say you already had them, but I'm 9 providing you as a supplemental disclosure the EPCRA 10 continuous release reporting forms we submitted to 11 various governmental agencies in late March, and I just 12 want the record to reflect those have been exchanged. 13 Q. BY MR. SHANKER: What's the typical average 14 weight of layer hens at Arlington South? 15 A. Roughly 3.25 pounds. 16 Q. How about at Tonopah? 17 A. 3.25 pounds. 18 Q. Do you know what the typical incoming 19 moisture content of litter entering the manure dryer 20 is? 21 A. No. 22 (Recess taken from 1:23 p.m. to 1:44 p.m.) 23 MR. SHANKER: So I've had a conversation with 24 counsel, and Mr. Phalen clearly has not been prepared 25 to answer the questions about the structural nature of</p>
<p style="text-align: right;">22</p> <p>1 issues that have not been fairly noticed to us with 2 regard to the -- you know, you're saying, oh, if you 3 have -- in an underground source facility creates more 4 or less -- 5 MR. SHANKER: Well, you can instruct him not 6 to answer. 7 MR. MURPHY: What I would suggest is, Howard, 8 let's try -- and I don't want to have a discovery 9 dispute if we can avoid it. Let's try and focus on 10 getting -- I don't want to have dialog with you what 11 boundaries you have on the questions because I haven't 12 talked to him about barn design or how manure is 13 stored, or whatever, that may have impact on ammonia 14 levels. 15 Q. BY MR. SHANKER: All right. Well, let's do 16 this. For now, without the assistance of your lawyer, 17 does the level and the treatment of manure impact 18 ammonia emissions? 19 A. Yes. Manure, yes. 20 Q. So I'm now not allowed to ask him how they 21 treat manure and what they do with it and where it's 22 stored and how it's ventilated? 23 MR. MURPHY: The level and amounts of ammonia 24 are numbers. The rest of it goes to how it's generated 25 and what can be done to stop it, on down the line.</p>	<p style="text-align: right;">24</p> <p>1 the facilities and some of these other specific 2 interests I have. If that's something we need to 3 pursue at a later date, we'll notify defense counsel 4 and schedule another deposition with someone who's been 5 prepared to answer those questions. Does that sound 6 reasonable? 7 MR. MURPHY: That does, and all I would say 8 is we'll need to -- you know, you need to be as 9 specific as possible so we can get someone up to speed, 10 but enough said. 11 MR. SHANKER: All right. So let me just -- I 12 do have a bunch of other things I wanted to discuss 13 with you. 14 Why don't we call this Exhibit 1. 15 (Exhibit No. 1 marked for identification.) 16 Q. BY MR. SHANKER: Okay. Why don't you take a 17 look at that. 18 Do you know what that is? 19 A. It appears it's an initial notification to 20 the Maricopa County LEPC 2006. 21 Q. All right. And it's indicating that they may 22 be -- Hickman may be generating routine air emissions 23 of ammonia in excess of 100 pounds per 24 hours; is 24 that correct? 25 A. That's what it says.</p>

<p style="text-align: right;">25</p> <p>1 Q. And a rough estimate of those emissions is</p> <p>2 approximately 125 pounds per 24 hours; is that correct?</p> <p>3 A. That's what it says.</p> <p>4 Q. Have you seen this before?</p> <p>5 A. I have not seen this before.</p> <p>6 Q. Do you know whose signature that is on the</p> <p>7 bottom?</p> <p>8 A. I don't.</p> <p>9 Q. Do you know how many layers there were in</p> <p>10 Arlington South in 2006?</p> <p>11 A. No, sir.</p> <p>12 Q. And I assume you don't know how many pullets</p> <p>13 there were in 2006?</p> <p>14 A. No, sir.</p> <p>15 Q. And this is before there was an Arlington</p> <p>16 North, right?</p> <p>17 A. I believe so.</p> <p>18 Q. I think Arlington North came on line in 2008;</p> <p>19 is that correct?</p> <p>20 A. I'm unsure. I don't know.</p> <p>21 Q. Okay. So with the addition of Arlington</p> <p>22 North, there would be significantly more emissions,</p> <p>23 wouldn't there?</p> <p>24 A. I don't know. Possibly.</p> <p>25 Q. So if you added a million chickens</p>	<p style="text-align: right;">27</p> <p>1 well as Diane Hernandez. I don't know who Diane</p> <p>2 Hernandez is. Based upon just the surface of this</p> <p>3 document, I will say yes.</p> <p>4 Q. Okay. And, in fact -- I don't want to mark</p> <p>5 these as exhibits, but let me give you each a copy.</p> <p>6 These are documents that Hickman gave us. So</p> <p>7 this letter was actually sent -- if you look at this</p> <p>8 first page, it was sent to the US EPA, Special</p> <p>9 Litigation and Projects Division; is that correct?</p> <p>10 A. Washington, D.C., yes.</p> <p>11 Q. And this same letter was sent to the National</p> <p>12 Response Center, correct?</p> <p>13 A. Correct.</p> <p>14 Q. And the same letter was sent to the Maricopa</p> <p>15 County LEPC?</p> <p>16 A. Correct.</p> <p>17 Q. And it was also sent to the Pinal County</p> <p>18 Emergency Services?</p> <p>19 A. Seems so, yes.</p> <p>20 Q. And to the Arizona Emergency Response Center?</p> <p>21 A. Yes.</p> <p>22 Q. So they sent this letter to all the</p> <p>23 appropriate agencies or committees involved in EPCRA</p> <p>24 reporting; is that correct?</p> <p>25 A. I don't see any signature or a proof that</p>
<p style="text-align: right;">26</p> <p>1 approximately, there may or may not be more emissions?</p> <p>2 A. Depending on construction as well as</p> <p>3 engineering controls, so unaware.</p> <p>4 Q. Really. So should we discuss construction</p> <p>5 and engineering controls?</p> <p>6 A. I'm not the person that is familiar with</p> <p>7 that.</p> <p>8 Q. So your testimony is if you took an extra</p> <p>9 million chickens, there wouldn't be any more emissions?</p> <p>10 A. My testimony is that most likely there would</p> <p>11 be more emissions. However, this document doesn't</p> <p>12 include any engineering controls that were established</p> <p>13 for the new construction.</p> <p>14 Q. So based on this document, you could assume</p> <p>15 that in 2006, from Arlington South, Hickman's was</p> <p>16 likely emitting more than a hundred pounds per day of</p> <p>17 ammonia, correct?</p> <p>18 A. It appears so, yes.</p> <p>19 Q. Okay. You could also assume that Hickman's</p> <p>20 was aware of the EPCRA Section 304 reporting</p> <p>21 requirements, right?</p> <p>22 A. It appears so.</p> <p>23 Q. Is that a yes?</p> <p>24 A. I -- it's before my time at Hickman's, and it</p> <p>25 has really Hickman's signature as well -- or name as</p>	<p style="text-align: right;">28</p> <p>1 this was sent, but based upon this, I can testify that</p> <p>2 it looks like it was intended to be sent if it wasn't</p> <p>3 sent. Unsure. Haven't seen this document before.</p> <p>4 Q. Again, these were documents that Hickman</p> <p>5 produced, so I can't tell if you they were sent or not.</p> <p>6 A. I believe they were, but unsure. It's not a</p> <p>7 complete document.</p> <p>8 Q. That's not the exhibit you're referring to;</p> <p>9 that's just --</p> <p>10 A. Correct.</p> <p>11 Q. -- the additional copies --</p> <p>12 A. Correct.</p> <p>13 Q. -- you sent?</p> <p>14 MR. SHANKER: Let's mark this as Exhibit 2.</p> <p>15 (Exhibit No. 2 marked for identification.)</p> <p>16 Q. BY MR. SHANKER: Take a minute to look</p> <p>17 through that.</p> <p>18 Have you ever seen this before, Exhibit 2?</p> <p>19 A. Yes.</p> <p>20 Q. So you understand that this is the 60-day</p> <p>21 notice letter that Don't Waste Arizona sent to</p> <p>22 Hickman's Egg Ranch, Inc., outlining some of the</p> <p>23 violations of EPCRA that were alleged in this lawsuit.</p> <p>24 Is that your understanding?</p> <p>25 A. Unclear whether or not you sent it or</p>

<p>29</p> <p>1 Mr. Brittle sent it, but, in general, that's my 2 understanding. 3 Q. Why are you unclear about that? 4 A. It's signed by Mr. Brittle but you're 5 representing Mr. Brittle. I'm not sure who sent this, 6 if you sent it on his behalf or not, but I understand 7 the content of the letter. 8 Q. So, I mean, I'm cc'd with this letter. 9 A. Okay. I didn't see those cc's. Okay. Thank 10 you. 11 Q. Can I draw your attention to page 2 where it 12 says number 2. Do you see where we are? 13 A. Yes, sir. 14 Q. All right. So the first sentence says, "That 15 Hickman's Egg Ranch, Inc. failed to submit a written 16 follow up emergency notice to the Maricopa County Local 17 Emergency Planning Committee and the Arizona Emergency 18 Response Commission as required under Section 304(c)," 19 and then he cites the statute, "of the Emergency 20 Planning and Community Right to Know Act (EPCRA) for 21 its unpermitted releases into the environment of 22 Hydrogen Sulfide and Ammonia from both Hickman's Egg 23 Ranch facilities." 24 With regard to ammonia only, do you agree 25 with that statement?</p>	<p>31</p> <p>1 A. Filed reports with who, if I may ask? 2 Q. Whoever they are required to file reports 3 with to be in compliance with EPCRA. 4 A. We filed reports on March 28th and 30th of 5 2017, so that would be action we took. Other than 6 that, I don't know. 7 Q. But aren't you the EPCRA compliance guy? 8 A. I'm the environmental program manager. 9 Q. But isn't EPCRA compliance why you're here? 10 A. Correct. 11 Q. So do you know whether or not Hickman filed 12 anything other than what you just pointed out to me in 13 response to this notice of violation? 14 A. I don't believe we filed anything other than 15 what we've provided. 16 Q. Okay. Thank you. 17 MR. SHANKER: Mark that as Exhibit 3. 18 (Exhibit No. 3 marked for identification.) 19 Q. BY MR. SHANKER: Have you ever seen this 20 document? 21 A. Can I compare it to 1 and 2? They are very 22 similar. 23 Yes, I've seen this. 24 Q. Okay. So this is a second notice of 25 violation that Mr. Brittle sent to Hickman's Egg Ranch</p>
<p>30</p> <p>1 A. "Hydrogen Sulphide and Ammonia have been 2 occurring on a daily basis for a period beginning on 3 May 1, 2003." Sir, the exhibit you showed me before 4 was dated 2006, so... 5 Q. I'm not sure where you're looking right now. 6 A. Section 2, "These reportable quantity 7 releases of Hydrogen Sulfide and Ammonia have been 8 occurring on a daily basis for a period beginning on 9 May 1, 2003." 10 Q. Okay. I didn't get there yet. But let me 11 give you some time frame parameters. I think that's a 12 reasonable observation. 13 So from -- let's see. Okay. So if we assume 14 from 2011 to the present, would the daily emissions 15 from the Arlington facility, and that includes both 16 Arlington North and South, would those daily ammonia 17 emissions have exceeded a hundred pounds per day? 18 A. Yes. 19 Q. And that's from 2011 until the present? 20 A. Correct. 21 Q. Okay. Now, do you know if Hickman Eggs Ranch 22 took any action with regard -- when they received this 23 notice of violation? Did they file any reports? 24 A. Exhibit 2? 25 Q. Yes.</p>	<p>32</p> <p>1 dated February 6, 2017; is that correct? 2 A. Yes. 3 Q. And it basically asserts the exact same 4 violations except going forward from -- give me a 5 minute here -- from May 3rd, 2016, which I believe is 6 the date we filed our complaint for the Arlington 7 facility and for the Tonopah facility; is that correct? 8 A. You're asking me what day you filed your 9 complaint? 10 Q. No. Take a look at the bottom of page 2, the 11 very last paragraph. 12 A. Okay. 13 Q. "These follow up emergency notices are 14 required for the reportable quantity releases of 15 Ammonia from the Hickman's Egg Ranch, Inc. facilities 16 that have been occurring on a daily basis for a period 17 beginning on May 3, 2016 continuing on a daily basis to 18 the present for the Arlington facility and the Tonopah 19 facility"; is that correct? 20 A. That is what the document says, sir, yes. 21 Q. And then did you file this replacement 22 continuous release reporting form in response to this 23 second notice of violation? 24 A. No, sir. 25 Q. So what prompted Hickman to file the</p>

<p>33</p> <p>1 replacement continuous release reporting forms?</p> <p>2 A. Good business practice as well as legal</p> <p>3 advice.</p> <p>4 Q. What's the good business practice end of it?</p> <p>5 Can you explain that to me?</p> <p>6 A. It's the right thing to do.</p> <p>7 Q. And why is that?</p> <p>8 A. Based upon estimates of ammonia emissions,</p> <p>9 it's a requirement that Hickman's strives to follow</p> <p>10 from this point on.</p> <p>11 Q. But they didn't strive to follow that</p> <p>12 previously?</p> <p>13 A. Before my time, I don't know, sir.</p> <p>14 Q. Just completely unrelated -- well, not</p> <p>15 completely unrelated. Do you know the primary and</p> <p>16 secondary sic codes for the Tonopah and Arlington</p> <p>17 facilities?</p> <p>18 A. I believe it's 1042. And secondary, unsure.</p> <p>19 Q. Is that for both facilities?</p> <p>20 A. It should be the same.</p> <p>21 Q. I just have a couple more questions since</p> <p>22 we're going to not be able to go into all the specifics</p> <p>23 today.</p> <p>24 Do you know if Hickman derived any economic</p> <p>25 benefit from not reporting over all these years? And</p>	<p>35</p> <p>1 Q. Do you know what it would have cost as far as</p> <p>2 an attorney or engineer or an emissions expert to have</p> <p>3 filed these reports over the year to figure out what</p> <p>4 the ammonia levels were?</p> <p>5 A. No.</p> <p>6 Q. Okay. Thank you.</p> <p>7 How many employees does Hickman have?</p> <p>8 A. Approximately 900 to a thousand, roughly.</p> <p>9 Q. And do you know what the annual total</p> <p>10 corporate entity sales are?</p> <p>11 A. No, sir.</p> <p>12 Q. So you don't know if they exceed \$30 million?</p> <p>13 A. I do not.</p> <p>14 Q. Who would know that?</p> <p>15 A. Chief financial officer, president, vice</p> <p>16 president.</p> <p>17 Q. Let me just make sure.</p> <p>18 All right. At this point I have no further</p> <p>19 questions. Again, I'll discuss with counsel whether or</p> <p>20 not we need to schedule a deposition with somebody else</p> <p>21 to go over the details, but I think we're done.</p> <p>22 MR. MURPHY: Thank you. We will read and</p> <p>23 sign, please.</p> <p>24 (Whereupon, the deposition was concluded at</p> <p>25 2:04 p.m.)</p>
<p>34</p> <p>1 let me explain what I mean by economic benefit.</p> <p>2 Usually there's a cost to rule familiarization and</p> <p>3 determining whether or not you have to report the</p> <p>4 analysis and maybe some cost to file the actual</p> <p>5 reports.</p> <p>6 Do you know what that cost would have been if</p> <p>7 they -- I mean, is there any way to estimate that?</p> <p>8 A. Zero.</p> <p>9 Q. And why do you say zero?</p> <p>10 A. No financial benefit was gained from not</p> <p>11 reporting.</p> <p>12 Q. No. What I'm asking -- let me try and be</p> <p>13 clear because I know that was not clear on my part.</p> <p>14 What would it have cost? So would they have</p> <p>15 had to pay attorneys' fees and an engineer to figure</p> <p>16 out how much ammonia emissions there were and whether</p> <p>17 or not they had to file these EPCRA reports? I assume</p> <p>18 that's something they would have had to incur.</p> <p>19 A. I can't assume. I don't know what costs that</p> <p>20 they would have for the attorneys, et cetera, but I</p> <p>21 don't believe that they incurred any profit or benefit</p> <p>22 from not -- financial benefit from it.</p> <p>23 Q. So do I -- let me ask the question again.</p> <p>24 Listen to the --</p> <p>25 A. Yes, sir.</p>	<p>36</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 I, the undersigned, say that I have read the</p> <p>7 foregoing transcript of testimony taken April 21, 2017,</p> <p>8 and I declare, under penalty of perjury, that the</p> <p>9 foregoing is a true and correct transcript of my</p> <p>10 testimony contained therein.</p> <p>11</p> <p>12 EXECUTED this ____ day of _____,</p> <p>13 2017.</p> <p>14</p> <p>15 _____</p> <p>16 ROBERT PHALEN</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

37

1 STATE OF ARIZONA)

) ss.

2 COUNTY OF MARICOPA)

3

4 BE IT KNOWN that the foregoing proceedings
 were taken before me, PAMELA JOY GIFFIN, Certified
 5 Reporter No. 50106, that the witness before testifying
 was duly sworn by me to testify to the whole truth;
 6 that the foregoing pages are a full, true and accurate
 record of the proceedings, all done the best of my
 7 skill and ability; that the proceedings were taken down
 by me in shorthand and thereafter reduced to print
 8 under my direction.

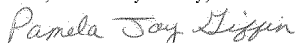
9 ☒ Review and signature was requested.10 ☐ Review and signature was waived.11 ☐ Review and signature not required.

12 I CERTIFY that I am in no way related to any
 of the parties hereto nor am I in any way interested in
 13 the outcome hereof.

14 I FURTHER CERTIFY that I have complied with
 the ethical obligations set forth in ACJA 7-206.

15 DATED at Phoenix, Arizona, this 1st day of May, 2017.

16



17 Pamela Joy Giffin, RPR

18 Certified Reporter

19 Certificate No. 50106

* * * * *

20 I CERTIFY that SEYMOUR REPORTING SERVICES
 21 has complied with the ethical obligations set forth in
 ACJA 7-206.

22

23



24 Rosina Seymour, RPR, Owner

25 Seymour Reporting Services

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